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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MOUANG SAECHAO, individually and on behalf of all others similarly situated, Plaintiff, v. LANDRY'S, INC., a Delaware corporation, and McCORMICK & SCHMICK RESTAURANT CORP, a Delaware corporation, Defendants.	Case No. 3:15-CV-00815-WHA **DECLARATION OF DAVID M. BRESHEARS IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, APPROVAL OF CLASS NOTICE, AND SCHEDULING OF FINAL FAIRNESS HEARING** Hearing Date: May 26, 2016 Hearing Time: 8:00 AM Location: 450 Golden Gate Ave, Courtroom 8, 19th Floor, San Francisco, CA 94102 Complaint filed: February 23, 2015 Trial date: July 5, 2016

I, David M. Breshears, declare as follows:

1. I am an individual over the age of 18 years and a non-party to the above-titled action. The facts set forth herein are personally known to me, and I have firsthand knowledge of the same. If called as a witness, I could and would competently testify thereto.

2. I am a Certified Public Accountant, licensed in the State of California, and Certified in Financial Forensics. I am currently a partner at Hemming Morse, LLP, CPAs, Forensic and Financial Consultants. I have been retained by Plaintiff's counsel in this action as an expert witness. My expert qualifications were described in my declaration in support of Plaintiff's Motion for Class Certification, filed January 28, 2016. My resume is attached hereto as Exhibit 1.

3. Attached hereto as Exhibit 2 is a true and correct copy of the opening expert report I prepared for this case.

4. In addition to the opinions expressed in my report, Plaintiff's counsel requested that I calculate the amount of potential penalties pursuant to the California Labor Code Private Attorneys General Act ("PAGA") arising out of Defendant McCormick & Schmick Restaurant Corporation's ("Defendant") alleged failure to furnish, during the period February 23, 2014 through February 23, 2015, employees paid via live checks with wage statements that fully complied with California Labor Code section 226(a). I have been informed by Plaintiff's counsel that every wage statement furnished to employees paid via live checks during February 23, 2014 through February 23, 2015 allegedly violated Section 226(a). I have also been informed by Plaintiff's counsel that, pursuant to Labor Code section 226.3, the maximum PAGA penalty for a non-compliant wage statement under the circumstances alleged by Plaintiff is $250 per violation.

5. Based on my analysis of Defendant's records, I conclude that the total amount of PAGA penalties potentially recoverable for this alleged violation is $116,500. This conclusion reflects the total number of wage statements issued to employees paid via live checks during February 23, 2014 - February 23, 2015, multiplied by $250.

6. I estimate that the total amount billed (or to be billed) by my firm to Plaintiff's counsel for work performed on this matter to date is approximately $45,000.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on April 14, 2016 in Walnut Creek, California.

David M. Breshears

EXHIBIT 1

(D. Breshears Curriculum Vitae)

EXHIBIT A

HEMMING MORSE, LLP

CERTIFIED PUBLIC ACCOUNTANTS,
FORENSIC AND FINANCIAL CONSULTANTS

CURRICULUM VITAE

www.hemming.com

David M. Breshears, CPA/CFF

Employment & Education

2012 – Present — **Hemming Morse, LLP**
Certified Public Accountants,
Forensic and Financial Consultants
Partner

1999 – 2011 — **Hemming Morse, Inc.**
Director, 2011
Manager, 2006-2010
Associate
Staff Accountant

1998 — **California State University, Chico**
B.S. Accounting

Professional & Service Affiliations

- Certified Public Accountant, State of California, since 2006
- Certified in Financial Forensics, since 2008
- American Institute of Certified Public Accountants
- California Society of Certified Public Accountants
- Association of Certified Fraud Examiners (Associate Member)

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David M. Breshears, CPA/CFF

Presentations & Seminars

- *"E-Discovery & Electronically Stored Information 101"*
  Beeson Tayer & Bodine, May 2013
- *"How to Collect, Produce, and Use E-Documents: A Practical Primer"*
  BASF - Labor & Employment Conference, Yosemite, February 2013
- *"Forensic Accounting for Today's Busiest Practice Areas"*
  Continuing Education of the Bar-California, March 2012
- *"Utilizing Experts in Wage and Hour Litigation"*
  Buchalter Nemer, July 2011
- *"Class Action Employment Litigation"*
  California Socity of Certified Public Accountants-State Steering Committee, August 2010
- *Adjunct Professor, Golden Gate University, Wage & Hour Damages, Spring 2009, Fall 2009, Spring 2010*

Testimony

Trial

- **Honora Keller et al v. The Board of Trustees of California State University (2015)**
  Superior Court of the State of California
  County of San Francisco, Case No. CGC-09-490977
- **Amanda Quiles, et al v. Koji's Japan Incorporated, et al. (2014)**
  Superior Court of the State of California, County of Orange, Case No. 30-2010-00425532-CU-OE-CXC
- **Ming-Hsiang Kao v. Joy Holiday, Joy Express, Inc., et al. (2014)**
  Superior Court of the State of California
  County of San Mateo, Case No. CIV509729
- **Salinas, et al. v. Imperial Irrigation District (2014)**
  Superior Court of the State of California
  City and County of Riverside, Case No. 10017367
- **Amerman v. Gurvinder Musafar (2013)**
  Superior Court of the State of California
  County of Santa Clara, Case No. 112CV226364
- **Michael J. Pexa v. Farmers Group, Inc. (2012)**
  Superior Court of the State of California
  County of Sacramento, Case No. 34-2009-00034950
- **Marina Puchalski and Rajeev Chhibber v. Taco Bell Corp. (2012)**
  Superior Court of the State of California
  County of San Diego, Case No. GIC 870429
- **Maria Martinez and Juana Guzman v. Jatco, Inc. (2011)**
  Superior Court of the State of California
  County of Alameda, Case No. RG08397316

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Testimony

Deposition

- **Sanchez, et al. v. McDonald's Restaurants of California, Inc. (2015)**
  Superior Court of the State of California
  County of Los Angeles, Case No. BC499888
- **Betelhem Shiferaw v. Sunrise Senior Living Management, Inc. (2015)**
  U.S. District Court, Central District of California
  Case No. 2:13-cv-02171-JAK-PLA
- **Honora Keller et al v. The Board of Trustees of California State University (2015)**
  Superior Court of the State of California
  County of San Francisco, Case No. CGC-09-490977
- **Ming-Hsiang Kao v. Joy Holiday, Joy Express, Inc., et al. (2014)**
  Superior Court of the State of California
  County of San Mateo, Case No. CIV509729
- **Fraser, et al. v. Patrick O'Connor & Associates, L.P. (2014)**
  U.S. District Court, Southern District of Texas
  Case No. 4:11-cv-03890
- **Salinas, et al. v. Imperial Irrigation District (2014)**
  Superior Court of California, City and County of Riverside, Case No. 10017367
- **Smith, et al. v. Family Video Movie Club, Inc. (2013)**
  U.S. District Court, Northern District of Louisiana
  Case No. 1:11-cv-01773
- **Lang v. DirecTV, Inc. (2013)**
  U.S. District Court, Eastern District of Louisiana
  Case No. 2:10-cv-01085-NJB-SS
- **Sabas Arredondo, et al. v. Delano Farms Company, et al. (2013)**
  Eastern District of California, Fresno Division
  Case No. 1:09-cv-01247-LJO-DLB
- **Gabriel Fayerweather v. Comcast Corporation (2012)**
  Superior Court of the State of California
  County of San Diego, Case No. C-08-01470
- **Green v. Konica Minolta Business Solutions U.S.A., Inc. (2012)**
  U.S. District Court, Northern District of Illinois
  Eastern Division, Case No. 11-CV-03745 (N.D. Ill.)
- **Marina Puchalski and Rajeev Chhibber v. Taco Bell Corp. (May 2012)**
  Superior Court of the State of California
  County of San Diego, Case No. GIC 870429
- **Marina Puchalski and Rajeev Chhibber v. Taco Bell Corp. (April 2012)**
  Superior Court of the State of California
  County of San Diego, Case No. GIC 870429
- **Martin Marine v. Interstate Distributor Co. (2012)**
  Superior Court of the State of California
  County of Alameda, Case No. RG073582777
- **Maria Martinez and Juana Guzman v. Jatco, Inc. (2011)**
  Superior Court of the State of California
  County of Alameda, Case No. RG08397316

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David M. Breshears, CPA/CFF

Selected Case Experience

- Engaged as damage expert by plaintiff, to analyze and quantify; meal and rest period claims, improper distribution of gratuities, and off-the-clock hours, for an upscale restaurant chain.
- Engaged as damage expert by defendant, a farm labor contractor, to evaluate claims related to off-the-clock hours worked and expense reimbursement for small tools for over 20,000 employees.
- Engaged as neutral accounting expert by plaintiff and defendant to calculate potential unpaid hours worked and additional overtime premiums for commission bonuses, for a manufacturing/engineering firm.
- Expert for the plaintiff. Retained to determine the frequency and magnitude of time shaving claims of a mid-size manufacturing firm.
- Provided consulting services to defense counsel in a class-action wage and hour matter, which alleged that hundreds of County employees were paid improper overtime wages under the FLSA. Prepared analyses using hours worked records, compensation data, employee records, and other data to determine the proper calculation of employees' regular rate of pay and related overtime compensation.
- Assisted counsel in preparing a case involving unpaid overtime, meal and rest break violations, and off-the-clock time for an employee of a hotel chain. Reviewed employment history files, time records, and other documents to determine the number of potential violations and to quantify damages.
- Assisted expert for plaintiffs' counsel in a class-action wage and hour matter, which alleged that over 250 small business banking officers were improperly classified as exempt. Reviewed statistical sample of hours worked, salary and commission related earnings, paid time off records, and other data to determine the damages related to unpaid overtime and missed meal breaks.
- Assisted expert for plaintiffs' counsel in a class-action matter against a fortune 500 company, which alleged that a class of several hundred individuals was misclassified as independent contractors in the state of Washington. Prepared analysis of average earnings across all class members and performed comparison to national averages for similarly situated employees and independent businesses. Performed business valuation services to determine economic value of independent contractor assets and to incorporate any discounts that may apply related to the controls and requirements of the customer/employer operating agreement.
- Assisted expert for plaintiffs' counsel in a class-action matter against a Fortune 500 company, which alleged that over 75,000 California employees were required to pool their tips with supervisory employees in direct violation of the California Labor Code.
- Provided consulting services to plaintiffs' counsel in a class-action wage and hour matter, which alleged that hundreds of employees were not paid the proper "living wage" in accordance with the company's contractual obligation. Created a database of hours worked and earnings information from paper and electronic records, and then providing damages estimates based on a variety of assumptions and legal theories.
- Advised counsel on class certification issues by applying economic and statistical approaches to analyze evidence relating to class member variation, if any, and to determine both liability and damages.
- Consulted for Health Provider in a dispute involving a guaranteed maximum price contract for the construction of various structures. Assisted the expert in analyzing construction costs incurred and calculating the amount due to the general contractor.

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HEMMING MORSE, LLP

CERTIFIED PUBLIC ACCOUNTANTS, FORENSIC AND FINANCIAL CONSULTANTS

David M. Breshears, CPA/CFF

Selected Experience continued

- Performed statistical and contractual analysis for labor settlement or arbitration purposes, including analysis of pay and benefits, job content, productivity, labor costs, and profitability.
- Consulted clients in their efforts to identify overpayments of construction projects; discover errors and identify unreasonable project charges; identify weaknesses in contractual agreements; reduce risks of fraud, waste, and abuse; and recover payments made in error.
- Prepared financial analyses in connection with assignments involving fraud, contract disputes and lost profits.
- Performed extensive research for a variety of cases, including cases involving fraud, contract disputes, and lost profits.
- Created various databases and/or tested the accuracy of databases created by others in order to assimilate large amounts of information to be presented in a meaningful manner.
- Managed audit engagements from planning to reporting, including delegation and review of staff assignments and control of time and expenses.
- Prepared and examined financial reports including research and analysis of technical accounting issues.
- Analyzed client accounting systems and related controls and developed specific recommendations for improvements.

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EXHIBIT 2

(Expert Report of D. Breshears dt. Apr 7, 2016)

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CASE NO. 3:15-CV-00815-WHA

MOUANG SAECHAO, individually and on behalf of all others similarly situated

v.

LANDRY'S, INC. and McCORMICK & SCHMICK RESTAURANT CORP

EXPERT REPORT OF DAVID BRESHEARS, CPA/CFF

I. Introduction

1. The opinions expressed in this report are my present opinions subject to the following reservations. Amendments or additions to this report may be required as a result of developments prior to or at trial, including, but not limited to, the discovery of new evidence, expert discovery, and the testimony of any other witness in deposition or at trial.
2. I anticipate using at trial selected exhibits attached to this report, documents reviewed in connection with their preparation, enhanced graphic versions of selected exhibits included in this report (i.e., redrafted to improve their presentation quality) and additional graphics illustrating concepts described in this report.

II. Assignment

3. I have been retained by counsel for the named Plaintiff and others similarly situated in the matter of Saechao v. Landry's, Inc. et al. Among other things, Plaintiff has alleged that she and other hourly, non-exempt employees at Spenger's Fresh Fish Grotto in Berkeley, California (1) were not provided with all required and timely meal breaks and were not properly compensated for those meal breaks that were not provided and untimely, (2) were not authorized and permitted rest breaks and were not properly compensated for rest breaks that were not authorized and permitted, (3) were not properly compensated for working split shifts. I previously issued a declaration, dated January 28, 2016, in support of Plaintiff's Motion for Class Certification. I have been asked to calculate the amount of potential damages, including penalties and interest, for (a) shifts in excess of five hours up to and including six hours with an unpaid potential missed or late first meal break, (b) shifts of at least three and one-half hours with an unpaid potential rest break that was not provided, and (c) unpaid potential split shifts with a gap between 61 and 90 minutes, as well as (d) waiting time penalties for all former employees. The damage period is from February 23, 2011 through February 23, 2015.

III. Summary of Expert Qualifications

4. I am a Certified Public Accountant, licensed in the State of California, and Certified in Financial Forensics. I am currently a partner at Hemming Morse, LLP, CPAs, Forensic and Financial Consultants. My office is in Walnut Creek, California. My work in the accounting profession includes experience as an auditor and as a consultant. My expert qualifications, including my testimony, were described in Exhibit A of my declaration in support of Plaintiff's Motion for Class Certification.
5. I have consulted on and/or testified in over 120 matters involving wage and hour-related disputes, including those arising under the FLSA and the California Labor Code. These matters have involved allegations of unpaid overtime, off-the-clock work, meal and rest break violations, employment misclassification, time shaving, record keeping violations, reporting time pay, split shift pay, and unreimbursed business expenses.
6. My firm has been compensated for my review and analysis in this matter at my standard hourly rate of $440 per hour. Others have assisted me in my work and my firm has been compensated for their work at their standard hourly rates.

IV. Summary of Opinions

7. I have calculated the following amount of potential damages, including penalties and interest[1]:

Category		Amount
Potential Meal Period Violations: For Shift of More than Five Hours but No More than Six Hours	$	156,279.43
Maximum Potential Rest Period Violations: For Shift of at Least Three and One Half Hours in Length	$	542,230.84
Potential Split Shift Violations: Multiple Shifts with More than Sixty Minutes but Not More than Ninety Minutes Between Shifts	$	1,164.00
Damages Due	$	699,674.27
Interest on Damages Due @ 10% thru 3-17-16	$	213,882.23
Section 226(a): Itemized Wage Statement Penalties ($50/$100 per violation)	$	43,850.00
Waiting Time Penalties: 3 Year Statute of Limitations	$	174,607.77
Statutory Penalties	$	218,457.77
Labor Code Section 558(a)(1) - Penalties for Meal Period Violations - Penalty	$	65,250.00
Labor Code Section 558(a)(1) - Penalties for Meal Period Violations - Wages Due	$	50,537.49
Labor Code Section 558(a)(1) - Penalties for Rest Period Violations - Penalty	$	78,900.00
Labor Code Section 558(a)(1) - Penalties for Rest Period Violations - Wages Due	$	129,923.24
Labor Code section 2699(f)(2) - Failure to Pay Off-the-Clock Wages	$	11,200.00
Labor Code section 558 - Unpaid Overtime - Penalty	$	1,700.00
Labor Code section 558 - Unpaid Overtime - Wages Due	$	2,156.98
Labor Code section 558 - Unpaid Split Shift Premium - Penalty	$	700.00
Labor Code section 558 - Unpaid Split Shift Premium - Wages Due	$	116.00
Labor Code section 558 - Unpaid Reporting Time Pay - Penalty	$	3,400.00
Labor Code section 558 - Unpaid Reporting Time Pay - Wages Due	$	1,657.70
Labor Code section 2699(f)(2) - Failure to Timely Pay All Wages at Least Twice Per Month	$	157,800.00
Labor Code section 2699(f)(2) - Failure to Pay All Wages Upon Termination	$	18,500.00
Labor Code Section 2699(f)(2) - Unauthorized Deductions from Pay	$	600.00
Labor Code Section 226.3 - Wage Statement Violations - ($250 per employee per pay period)	$	398,250.00
PAGA Penalties	$	920,691.41
Total Damages, Interest, and Penalties	$	2,052,705.68

[1] I am informed by counsel that Plaintiffs may be entitled to penalties in addition to those I have been asked to calculate.

V. Evidence Considered

8. In undertaking my assignment, I have considered information from a variety of sources, each of which is of a type that is regularly relied upon by experts in my field. Those sources are identified throughout this report and were identified in my declaration in support of Plaintiff's Motion for Class Certification.
9. Since my declaration in support of Plaintiff's Motion for Class Certification, I have been provided with (a) the Plaintiff's Responses to Interrogatories, Set One; (b) the Plaintiff's Responses to Interrogatories, Set Two; (c) the Deposition of Mouang Saechao, dated November 18, 2015; (d) the Deposition of Mouang Saechao, dated February 2, 2016; and (e) the Witness Declarations in Support of Plaintiff's Motion for Class Certification.

VI. Basis of Opinions

Re: Meal Breaks

10. I have been informed by counsel that (absent a valid waiver) Defendant is required by California law to provide employees with an uninterrupted meal break of at least 30 minutes for each shift an employee works in excess of five hours, with the meal break beginning before the end of the employee's first five hours of work.
11. As discussed in my declaration in support of Plaintiff's Motion for Class Certification, of the 62,398 shifts with recorded hours in the time punch files, there are 21,715 shifts in excess of five hours up to and including six hours. Of these 21,715 shifts in excess of five hours up to and including six hours, I have identified that 17,871 shifts, or 82.3%, showed no recorded meal break of at least 30 minutes or no recorded meal break of at least 30 minutes until after an employee's first five hours of work.
12. As discussed in my previous declaration, of the 17,871 shifts in excess of five hours up to and including six hours that showed no recorded meal break of at least 30 minutes or no recorded meal break of at least 30 minutes until after an employee's first five hours of

work, I was able to identify, based on available pay data[2], that the employee appears to have been paid an extra hour of wages as premium pay in 181 of these shifts. As such, the employee does not appear to have been paid an extra hour of wages as premium pay in 17,690 of these shifts.

13. Of the 17,690 shifts where the employee does not appear to have been paid an extra hour of wages as premium pay, 15,430 shifts fall within the damage period from February 23, 2011 through February 23, 2015. For each of these 15,430 shifts, I have calculated potential damages as one hour of wages at the related base wage rate[3]. Damages related to an unpaid potential missed or late first meal break for shifts in excess of five hours up to and including six hours total approximately $156,279.

Re: Rest Breaks

14. I have been informed by counsel that Defendant is required to authorize and permit employees who work at least three and one-half hours in a shift a paid rest break of at least ten minutes for every four hours worked or major fraction thereof. I have also been informed that if an employee is not authorized and permitted a required rest break, the employee is owed an extra hour of wages as premium pay [4].

15. As discussed in my declaration in support of Plaintiff's Motion for Class Certification, of the 62,398 shifts with recorded hours in the time punch files, there are 58,785 shifts of three and one-half hours or more. Although Defendant's pay files do not denote in the "missed break pay" field whether the pay is a meal break premium or a rest break premium, I have conservatively applied the missed break pay instances that could not be assigned to a potential missed/late meal break to the shifts of three and one-half

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[2] As discussed in footnote 14 of my previous declaration, there are 1,406 shifts in excess of five hours up to and including six hours that showed no recorded meal break of at least 30 minutes or no recorded meal break of at least 30 minutes until after an employee's first five hours of work for which there appears to be no pay data.

[3] With respect to shifts for which there appears to be no pay data, the related base wage rate was assumed to be the base wage rate of prior pay periods.

[4] As discussed in footnote 17 of my previous declaration, there were 17 missed break pay and 62 assumed missed break pay in 2012 instances that could not be assigned to a potential missed/late meal break.

hours or more. As such, the employee does not appear to have been paid an extra hour of wages as premium pay in 58,714 of these shifts.

16. Of the 58,714 shifts where the employee does not appear to have been paid an extra hour of wages as premium pay, 52,676 shifts fall within the damage period from February 23, 2011 through February 23, 2015. For each of these 52,676 shifts, I have calculated potential damages as one hour of wages at the related base wage rate. Damages related to an unpaid potential missed rest break for shifts of three and one-half hours or more total approximately $542,231.

Re: Split Shifts

17. As discussed in my declaration in support of Plaintiff's Motion for Class Certification, of the 62,398 shifts with recorded hours in the time punch files, there are 769 split shifts (i.e., when there is a gap greater than one hour between two instances of recorded time within a shift date). Of these 769 split shifts, I have identified that 341 shifts showed a gap between 61 and 90 minutes.
18. Of the 341 split shifts with a gap between 61 and 90 minutes, I was able to identify, based on available pay data[5], that the employee appears to have been paid "Shift Pay" (which I understand is how Defendant denotes split shift premium pay) in 85 of these shifts. As such, the employee does not appear to have been paid "Shift Pay" in 256 of these shifts.
19. Of the 256 split shifts with a gap between 61 and 90 minutes where the employee does not appear to have been paid "Shift Pay", 240 split shifts fall within the damage period from February 23, 2011 through February 23, 2015. Of these 240 split shifts, it appears that 145 were worked by employees who were paid minimum wage and 95 were worked by employees who were paid above minimum wage.
20. For each of the 145 split shifts worked by employees who were paid minimum wage, I have calculated potential damages as one hour of wages at the related minimum wage[6].

[5] There are 46 split shifts with a gap between 61 and 90 minutes for which there appears to be no pay data.

[6] The minimum wage increased from $8 per hour to $9 per hour on July 1, 2014.

For each of the 95 split shifts worked by employees who were paid above minimum wage, I have calculated potential damages, on a pay period basis, as the difference, if any, between pay for recorded hours at the related base wage and pay for recorded hours plus one hour at the related minimum wage. Damages related to an unpaid split shift with a gap between 61 and 90 minutes total $1,164.

Interest

21. As a consequence of violating the California Labor Code, I am informed by counsel that Defendants may also be subject to interest based on meal period, rest period, and split shift premiums due at a rate of 10% simple. I have calculated simple interest at 10% from the pay period ending date through March 17, 2016. Interest totals approximately $213,882.

Statutory Penalties

22. I am informed by counsel that, pursuant to Labor Code 226, Plaintiffs may be entitled to statutory penalties for non-compliant wage statements at $50 for the initial violation per employee per pay period and $100 for each subsequent violation per employee per pay period up to a total of $4,000 per employee. I have assumed a violation for each Plaintiff and pay period where a manual check was issued[7]. These potential penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total $43,850.
23. I am informed by counsel that, pursuant to Labor Code 203, Plaintiffs may be entitled to waiting time penalties for non-payment of wages due at separation from employment up to a maximum rate of 30 days' wages. I have calculated waiting time penalties for any terminated Plaintiff[8] with potential damages as 30 days multiplied by the average hours worked per day for the last four pay periods at the related base wage rate. These

[7] Those pay periods in 2014 with a payment type of "CHECK" and those pay periods in 2015 if the Plaintiff was issued a manual check at the end of 2014.

[8] I have assumed that a Plaintiff was terminated if the term date in the Class List was less than February 23, 2015 or if the employee has no recorded hours after pay period ending date February 23, 2015.

potential penalties, under a three-year statute of limitations from February 23, 2012 to February 23, 2015, total approximately $174,608.

PAGA Penalties

24. I am informed by counsel that, pursuant to PAGA, Plaintiffs may be entitled to civil penalties, which I have calculated as follows:

25. Pursuant to Labor Code 558, Plaintiffs may be entitled to an amount sufficient to recover unpaid wages plus $50 per pay period for potential meal break violations. I have assumed a violation for each Plaintiff and pay period with at least one unpaid potential missed or late first meal break for shifts in excess of five hours up to and including six hours. I have also calculated the amount sufficient to recover unpaid wages per pay period as described above in paragraph 13. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total approximately $115,787 (i.e., $65,250 + $50,537).

26. Pursuant to Labor Code 558, Plaintiffs may be entitled to an amount sufficient to recover unpaid wages plus $50 per pay period for potential rest break violations. I have assumed a violation for each Plaintiff and pay period with at least one unpaid potential missed rest break for shifts of three and one-half hours or more. I have also calculated the amount sufficient to recover unpaid wages per pay period as described above in paragraph 16. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total approximately $208,823 (i.e., $78,900 + $129,923).

27. Pursuant to Labor Code 2699(f)(2), Plaintiffs may be entitled to $100 per pay period for off-the-clock work. I have been asked to assume a violation for each pay period of the Plaintiffs who specified the duration and frequency of his/her off-the-clock work per week in his/her declaration or deposition testimony. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total $11,200.

28. Pursuant to Labor Code 558, Plaintiffs may be entitled to an amount sufficient to recover unpaid wages plus $50 per pay period for unpaid overtime. For the Plaintiffs

who specified the duration and frequency of his/her off-the-clock work per week in his/her declaration or deposition testimony, I have assumed a violation for each pay period where his/her average daily off-the-clock work would result in at least one shift over eight hours. I have also calculated the amount sufficient to recover unpaid wages per pay period as the off-the-clock work over eight hours in a shift at one and one-half times the related base wage rate. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total approximately $3,857 (i.e., $1,700 + $2,157).

29. Pursuant to Labor Code 558, Plaintiffs may be entitled to an amount sufficient to recover unpaid wages plus $50 per pay period for unpaid split shift premiums. I have assumed a violation for each Plaintiff and pay period with at least one unpaid potential split shift. I have also calculated the amount sufficient to recover unpaid wages per pay period as described above in paragraph 20. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total $816 (i.e., $700 + $116).

30. Pursuant to Labor Code 558, Plaintiffs may be entitled to an amount sufficient to recover unpaid wages plus $50 per pay period for unpaid reporting time pay. I have assumed a violation for each Plaintiff and pay period with at least one shift of less than one and one-half recorded hours. I have also calculated the amount sufficient to recover unpaid wages per pay period as the difference between three hours and the recorded hours[9] in a shift at the related base wage rate. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total approximately $5,058 (i.e., $3,400 + $1,658).

31. Pursuant to Labor Code 2699(f)(2), Plaintiffs may be entitled to $100 per pay period for failure to pay all wages at least twice per month. I have assumed a violation for each Plaintiff and pay period with potential meal break, rest break, and/or split shift damages. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total $157,800.

[9] The difference also takes into account any off-the-clock work described above in paragraphs 27 and28.

32. Pursuant to Labor Code 2699(f)(2), Plaintiffs may be entitled to $100 for failure to pay all wages upon termination. I have assumed a violation for each terminated Plaintiff. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total $18,500.

33. Pursuant to Labor Code 2699(f)(2), Plaintiffs may be entitled to $100 for unauthorized deductions from pay. I have been asked by counsel to assume a violation for each terminated Plaintiff who received a pay check at least two weeks after his final day of work.[10] These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total $600.

34. Pursuant to Labor Code 226.3, Plaintiffs may be entitled to $250 per pay period for wage statement violations. I have been asked by Plaintiff's counsel to assume a violation for each Plaintiff and pay period. These potential PAGA penalties, under a one-year statute of limitations from February 23, 2014 to February 23, 2015, total $398,250.

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David Breshears, CPA/CFF
April 7, 2016

[10] The two week period is based on the employee's termination date and final pay check date. As the 2015 payroll record data provided to me by counsel did not include a check date field, no penalties have been calculated for those individuals terminating after December 31, 2014.